

**COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN SUPERIOR COURT**

BONITA JOYNER,

Plaintiff,

v.

BEHAVIORAL HEALTH NETWORK,  
INC.,

Defendant.

Case No. 2079CV00629

**MEMORANDUM IN SUPPORT OF MOTION  
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

On September 28, 2021, the Court granted preliminary approval to the proposed Stipulation and Agreement of Settlement (the “Settlement”)<sup>1</sup>; found that the Settlement appeared fair, reasonable, and adequate, on a preliminary basis; and directed that notice of the Settlement be given to the Class so that any member who wished could object. The deadline to object has now passed and of approximately 130,000 Class members only one has objected (although not in the manner required by the Settlement). The substance of the objection does not pertain to the terms of the Settlement but instead copies and pastes various theories relating to other unrelated matters and unrelated parties. Notwithstanding this stray objection, the overwhelmingly positive response from the Class affirms the Court’s initial conclusion that the Settlement is fair, reasonable, and adequate, and the Court should now grant final approval so that the Settlement

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<sup>1</sup> The Settlement was previously filed on September 23, 2021, as Exhibit 1 to the Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement.

can become effective, its benefits can be distributed to the Class, and this matter can be dismissed.

## FACTS

**I. Plaintiff brings claims relating to a data breach that compromised the confidential information of 130,000 of Defendant’s patients.**

On November 19, 2020, Plaintiff filed a Class Action Complaint against Defendant Behavioral Health Network, Inc. relating to a data breach that occurred between May 26 and May 28, 2020, in which an unauthorized person gained access to the confidential and protected personally identifiable information of nearly 130,000 patients of Defendant. Compl. ¶ 2. Plaintiff alleged that she and other patients faced a significant risk of identity theft as a result of the data breach. Compl. ¶¶ 19–25.

**II. The parties engage in a mediation and arm’s-length negotiations over months to reach a compromise and settlement.**

On May 12, 2021, the parties agreed to attempt to resolve this action through mediation. Declaration of Lynn A. Toops (“Toops Decl.”) ¶ 4.<sup>2</sup> The Court entered an order granting the parties’ motion to stay proceedings pending the outcome of the mediation.

On June 28, 2021, the parties participated in an arm’s-length mediation facilitated by the Honorable Morton Denlow (ret.) of JAMS Resolution Center. Toops Decl. ¶ 5. Throughout the mediation session and for several weeks thereafter, the parties continued to engage in extensive evaluation of the strengths and weaknesses of each party’s claims and defenses. *Id.* Taking into account that evaluation, as well as the risks, uncertainties, costs, and delays of continued litigation, the parties eventually reached a proposed compromise and executed a term sheet on

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<sup>2</sup> Ms. Toops’ Declaration was previously filed on September 23, 2021, as Exhibit 2 to the Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement.

July 20, 2021. *Id.* The parties then negotiated the detailed terms of the Settlement over several months and executed the final Settlement Agreement on September 16, 2021. *Id.*

**III. The terms of the Settlement address both the potential for future identity theft caused by the data breach and economic losses that have already been incurred.**

The terms of the Settlement are designed to address the harms caused by the data breach, both by providing for credit monitoring and identity theft restoration services (including \$1,000,000 in identity theft insurance coverage for each participating member of the Settlement Class) and by providing a fund for members of the Settlement Class to receive compensation for Economic Losses, including lost time, related to the data breach. Settlement § 5. Specifically, the Settlement provides for the following:

- Unopposed certification of the Settlement Class, defined as all individuals to whom a notification was sent on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident. Settlement § 4.
- Defendant to pay \$1,200,000 into a Settlement Fund to be used to provide credit monitoring and identity theft restoration services; payments for Economic Losses, including lost time, relating to the data breach; costs of notice and administration; attorneys' fees; and a service award to the Class Representative. Settlement § 1.34.
- No reversion of the Settlement Fund to Defendant; instead, any amounts remaining uncollected in the Settlement Fund will be disbursed as a *cy pres* award to a charity approved by the Court. Settlement § 5.5.11.
- Additional actions taken by Defendant to better protect and safeguard the personal information of the members of the Settlement Class. Settlement § 5.5.10.

**IV. The Court grants preliminary approval, notice is given to the Class, and only one Class member objects to the Settlement or any part of it.**

On September 28, 2021, the Court granted preliminary approval to the Settlement; found that the Settlement appeared fair, reasonable, and adequate, on a preliminary basis; and directed that notice of the Settlement be given to the Class so that any member who wished could object. The Settlement Administrator established a Settlement Website to provide detailed information

about the Settlement, along with a toll-free telephone number where Class members could have questions answered by a live operator. *See* Declaration of Gio Santiago Re: Notice Procedures (“Notice Decl.”) ¶¶ 6–7, attached to the Motion as Exhibit 1. On October 28, 2021, the Settlement Administrator sent the Court-approved notice of the Settlement to the Massachusetts IOLTA Fund Committee and to approximately 130,000 Class members. *Id.* ¶¶ 2–3. Only 986 of the notices were returned without a forwarding address and for which the Administrator could not locate any additional address, meaning that notice was effectively delivered to over 99% of the Class members. *Id.* ¶¶ 5. The deadline to object to the Settlement passed on November 29, 2021, and the Administrator reports that no objections were received by mail as required under the terms of the Settlement and the Preliminary Approval Order. *Id.* ¶ 8.

On November 29, 2021, however, one person emailed a “Motion to Object to Class Action Settlement Offer” to the Clerk of the Court (the “Objection”). A copy of the Objection is attached as **Exhibit 2** to the Motion. In addition to being procedurally improper, the Objection does not actually object to the terms of the Settlement at all. Instead, the Objection discusses various theories relating to completely unrelated people (Prince Andrew, Jeffrey Epstein, Mark Wahlberg, Eddie Murphy, Bill Gates, Tamerlan Tsarnaev, etc.) and completely unrelated topics (the Boston Bombings, various movies, the Westfield Police, various judges of this Court, the District Attorneys’ Office, etc.). The Objection does not claim that the Settlement is not fair, reasonable, and adequate.

The Massachusetts IOLTA Committee also filed an objection, but that objection only seeks to have the Court select the Committee as the *cy pres* recipient for any residual settlement funds under Massachusetts Rule of Civil Procedure 23(e)(2). The Parties now agree, however,

that the Committee is an appropriate *cy pres* recipient and do not object to the Court selecting the Committee as the *cy pres* recipient as part of final approval.

## DISCUSSION

### I. The Court should grant final approval to the Settlement.

The Court should grant final approval to the Settlement because it represents an excellent result for the Settlement Class and is a fundamentally fair, reasonable, and adequate compromise to which no Class member objects.<sup>3</sup>

Under Massachusetts Rule of Civil Procedure 23(c):

A class action shall not be dismissed or compromised without the approval of the court. The court may require notice of such proposed dismissal or compromise to be given in such manner as the court directs. The court shall require notice to the Massachusetts IOLTA Committee for the purpose set forth in subdivision (e)(3) of this rule.

Approval of a class action settlement by the Court is a staged process. *See generally In re Mass. Smokeless Tobacco Litig.*, No. CIV.A. 03-5038-BLS1, 2008 WL 1923063, at \*3 (Mass. Super. Ct. Apr. 9, 2008). First, the Court determines whether the proposed settlement should be preliminarily approved and notice of the settlement distributed to the proposed settlement class. *See id.* Then, after considering any objections received from the Class members, the Court determines whether to grant final approval to the proposed settlement. *See id.*

The established standard for final approval is whether a proposed settlement is “fair, reasonable, and adequate.” *Id.* In reviewing a settlement, the Court must bear in mind that voluntary settlements are favored, and “[t]here is a presumption that a settlement is within the

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<sup>3</sup> As part of granting preliminary approval, the Court certified the Settlement Class. No facts have changed relating to class certification and therefore the Court’s certification of the Settlement Class remains appropriate at the final approval stage.

range of reasonableness “[w]hen sufficient discovery has been provided and the parties have bargained at arms-length.” *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 343 (D. Mass. 2015), *aff’d*, 809 F.3d 78 (1st Cir. 2015) (quoting *City P’ship Co. v. Atl. Acquisition Ltd. P’ship*, 100 F.3d 1041, 1043 (1st Cir. 1996)).<sup>4</sup> The determination of whether a settlement is fair, reasonable, and adequate should be conducted “within the context of the public policy favoring settlement.” *Hill v. State St. Corp.*, No. 09-12146, 2015 WL 127728, at \*6 (D. Mass. Jan. 8, 2015).

Rule 23 does not provide factors for a court to consider in assessing whether a settlement is “fair, reasonable, and adequate,” but the Supreme Judicial Court of Massachusetts “examine[s] the reasonableness of the settlement under the totality of the circumstances.” *Sniffin v. Prudential Ins. Co. of America*, 395 Mass. 415, 426, 480 N.E.2d 294, 300 (1985). Case law “offers a laundry list of factors” that a court may consider in evaluating a settlement’s fairness, but those factors “[a]ll speak to the core question of the reasonableness of the settlement in light of the uncertainties of litigation.” *Bezdek*, 79 F. Supp. 3d at 343 (citation omitted). These factors include:

- the complexity, expense, and likely duration of the litigation;
- the risks of establishing liability;
- the risks of establishing damages;
- the risks of maintaining the class action through the trial; and
- the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

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<sup>4</sup> Although not bound by decisions of lower federal courts, Massachusetts courts “give respectful consideration to such lower Federal court decisions as seem persuasive.” *Commonwealth v. Sanchez*, 485 Mass. 491, 499, 151 N.E.3d 404, 415 (2020).

*See id.* at 343–44.

Considering these factors, the terms of the Settlement warrant final approval.

The benefits of the proposed Settlement to the Settlement Class are substantial. Toops Decl. ¶¶ 6–8. The payment of \$1,200,000 will be used to (1) purchase credit monitoring and identity theft restoration services (including \$1,000,000 in identity theft insurance for each participating member of the Settlement Class) that will help protect members of the Settlement Class from future potential identity theft, and (2) to reimburse Economic Losses, including lost time, that members of the Settlement Class have already incurred because of the data breach. These are significant benefits designed to address the harms caused by the data breach. *Id.* In addition, the Settlement provides that the Defendant will implement additional safeguards to protect the personal information of the members of the Settlement Class. Settlement § 5.5.10.

The Settlement was reached after extensive analysis of the relevant facts and law; the Settlement is the result of arm’s-length negotiations overseen by a nationally prominent and experienced mediator—retired federal judge Morton Denlow; and Class Counsel is highly experienced in litigating class action and complex litigation. Toops Decl. ¶¶ 2, 9 & Exs. A–C.

This result is particularly favorable given the risks of continued litigation. *Id.* ¶ 10. Plaintiff faced serious risks prevailing on the merits, including proving causation, as well as risk at class certification and at trial, and surviving appeal. *Id.* A settlement today not only avoids the risks of continued litigation, it provides a benefit to the member of the Settlement Class now as opposed to after years of risky litigation. *Id.* The Settlement benefits unquestionably provide a favorable result to the members of the Settlement Class, placing the Settlement well within the range of possible final approval.

Finally, and importantly, out of approximately 130,000 Class members, only one Class member has objected to the Settlement. As explained above, the Objection does not actually relate to the Settlement at all but to various theories about other topics. Thus, the overwhelming response from the Class to the Settlement is positive response and reaffirms the Court's preliminary conclusion that the Settlement is fair, reasonable and adequate. Likewise, the Massachusetts IOLTA Committee also filed an objection, but that objection only seeks to have the Court select the Committee as the *cy pres* recipient for any residual settlement funds under Massachusetts Rule of Civil Procedure 23(e)(2). The Parties now agree, however, that the Committee is an appropriate *cy pres* recipient and do not object to the Court selecting the Committee as the *cy pres* recipient as part of final approval and the tendered Final Approval Order does so. Therefore, the Court should grant final approval.

### CONCLUSION

The Court should enter the tendered Final Approval Order granting final approval to the Settlement and entering judgment on the Settlement.

Dated: November 30, 2021

Respectfully submitted,

/s/ Michael S. Appel

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CERTIFICATE OF SERVICE

I, Michael S. Appel, hereby certify that I have on the above date served the foregoing by email and first-class mail, postage prepaid, to the following counsel of record:

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